

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3318-01  
Bill No.: HB 1427  
Subject: Contracts and Contractors; State Departments  
Type: Original  
Date: February 11, 2002

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
General Revenue	(\$187,870 to Unknown)	(\$183,339 to Unknown)	(\$188,530 to Unknown)
Various	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>All</u> State Funds*</b>	<b>(\$187,870 to Unknown)</b>	<b>(\$183,339 to Unknown)</b>	<b>(\$188,530 to Unknown)</b>

**\*Does not include possible increased costs for services and goods.**

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
Federal	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds*</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**\*Unknown revenue and costs expected to exceed \$100,000 annually, net to \$0.**

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 10 pages.

## FISCAL ANALYSIS

### ASSUMPTION

Officials from the **City of Kansas City, Jackson County, St. Charles County, and Greene County** did not respond to our fiscal impact request.

Officials from the **Departments of Public Safety, Transportation, Elementary and Secondary Education, Agriculture, Revenue, and the Office of Administration - Division of Design and Construction** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **City of Springfield** assume the proposal would have no fiscal impact since participation is optional.

Officials from the **City of St. Louis (STL)** note the regulations proposed are applied prospectively to potential future contracts and therefore it is not possible to provide a specific fiscal impact. STL states they already have, through charter and ordinances, a process for receiving bids for contracted services and assumes to the extent that the proposal would enact further restrictions and/or costs to prospective bidders the proposal would reduce the savings potential of the contract option and result in a negative fiscal impact.

Officials from the **Office of the Attorney General** assume additional costs resulting from passage of the proposal could be absorbed with existing resources.

Officials from the **Department of Higher Education (CBH)** assume none of their external contracts in excess of \$25,000 fit the definition of "privatization contracts." CBH notes a fiscal impact could be incurred and result in additional budget requests if their assumption is subsequently proven to be false.

Officials from the **Department of Mental Health (DMH)** state they do not currently have any privatization contracts nor expects to enter into such a contract in the future. DMH assumes the proposal would not alter existing personnel practices during the privatization process and, therefore, anticipates no fiscal impact.

Officials from the **Department of Health and Senior Services (DOH)** assume the proposed legislation would not be expected to significantly impact its operations. DOH officials note if the proposal were to substantially impact its programs, they would request funding through the legislative process.

Officials from the **Department of Insurance (INS)** state that they currently contract out the

examinations required for licensure. The contract is bid through the Office of Administration and ASSUMPTION (continued)

the contractor collects the examination fees and the Department does not provide any funds to the contractor. INS assumes the proposal would have no fiscal impact on their agency, but notes it would make changes in the Office of Administration bid process for this contract. INS notes the proposal would increase paperwork and reporting for any agency and contractor involved in privatization of services.

Officials from the **Department of Conservation** assume the proposal could have significant administrative and fiscal impact on their agency because of the requirements placed on certain service contracts, and state the amount of fiscal impact is unknown.

Officials from the **Department of Economic Development (DED)** assume that specific budget or statutory authority to contract with entities would override these provisions. DED assumes that they have no contracts that fit the definition of "privatization contracts." DED notes if this is subsequently proven to be an erroneous assumption, possible fiscal impact could be incurred by the DED and would result in additional budget requests. DED assumes this proposal does not apply to contracts for services that cannot be provided with state employees. DED also assumes that the proposal would not require compliance if a budget document directed contracting with a specific entity for amounts in excess of \$25,000.

Officials from the **Department of Natural Resources (DNR)** assume, for purposes of this fiscal note that if they have asked for, or been given the authority, to contract services through the appropriation process that they have complied with the intent of this proposal.

DNR notes the proposal appears to conflict with the existing statute regarding contracts with concessionaires. Section 253.080 RSMo. states "The director may award by contract to any suitable person, persons, corporation or association the right to construct, establish and operate public services, privileges, conveniences and facilities on any land, site or object under the department's control for a period not to exceed twenty-five years with a renewal option, and may supervise and regulate any and all charges and fees of operations by private enterprise for supplying services and operating facilities on state park areas."

DNR states if this is not the intent of this proposal, the provisions of this proposal may result in the Department requesting additional resources.

Officials from the **Office of State Courts Administrator (CTS)** assume the proposed legislation would regulate privatization of governmental services or support operations through contracts with private entities. CTS states they have no basis for estimating any increase in civil litigation as a

result of the proposal, but there is potential, and the volume is unknown until the proposal has been in place for some time. CTS assumes any significant increase in the volume of civil litigation would ASSUMPTION (continued)

have a corresponding impact on the state and local budget of the judiciary. CTS notes there is some potential that the proposal could increase administrative and operating costs of future contracts entered into by the judiciary. CTS states it is not feasible to predict such fiscal impacts in advance.

Officials from the **Secretary of State (SOS)** state that this proposal will require all state bodies entering into privatization contracts to publish bids and results of those contracts in the Missouri Register. SOS states with no information to establish how many of these bids will occur in a year, there is no way to estimate a cost. If these occur frequently, the cost could be significant. The length of these bids is also unknown. SOS estimates the cost of a page in the Missouri Register to be \$23.00 and notes the cost could be minor or very significant depending on the number of pages the bids and results require. SOS also notes that a massive increase in pages to the Missouri Register would result in the need for additional staffing in addition to the printing costs of the additional pages. SOS assumes the impact of this proposal in future years is unknown and depends upon the frequency and length of bids and results published.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple proposals pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Social Services (DOS)** state that there are several large contracts in the DOS which might fall into the terms of the proposal. DOS divisions may realize an additional fiscal impact to smaller contracts as a result of changing the contract dollar amount to \$25,000. DOS assumes the Division of Budget and Finance will work with the other divisions when these contracts are re-bid and the work required by the proposal would increase the employees' time needed to complete these contracts. DOS estimates the fiscal impact to their agency to be unknown greater than \$100,000.

Officials from the **Department of Corrections (DOC)** anticipate a significant fiscal impact from passage of the proposal. DOC notes that they enter into professional and service contracts that would be affected by the components of this proposal, not the least of which is the medical services contract. DOC states the costs associated with this effect are unknown, but express the following concerns: 1) limiting a contract to two years could result in bidders proposing significantly higher cost for requested services or deciding to not even bid on state contracts. This would reduce the competitive field, therefore resulting in increased costs for the state; 2) the time frame stipulated for advertising the Request for Proposal is too restrictive and would further hinder those who could not bid within the allowed time period; and 3) privatization is, at times, much more cost-effective in the ratio of quality to cost than trying to provide a professional service by state employees who cannot

be hired/retained due to low salaries for professional and semi-professional positions. DOC expects that passage of the proposal would cause fiscal impact in excess of \$100,000 annually.

ASSUMPTION (continued)

Officials from the **Department of Labor and Industrial Relations (DOL)** note the proposal requires their agency to provide various information. DOL assumes there will be a fiscal impact; however, the amount is unknown due to the lack of specific information requirements in the proposal.

Officials from the **Office of Administration - Division of Purchasing and Materials Management (DPMM)** assume the proposed legislation would apply to many professional and general services contracts awarded by DPMM. DPMM assumes that would need one additional Buyer III to ensure that all additional requirements of the proposal are met. DPMM notes the new Buyer III would either prepare the cost estimate of providing the service by public employees or review the cost estimate prepared by state agencies. After bids have been submitted, the Buyer would prepare a comprehensive analysis of the contract costs.

Officials from the **Office of Administration – Division of Facilities Management (DFM)** assume the requirements in the proposal would result in a long certification process. DFM assumes it would need two Contract Specialists, rental space, and related expense and equipment to comply, resulting in annual costs of more than \$130,000.

**Oversight** assumes the DFM will not need additional space for the requested FTE.

**Oversight** is showing costs to local governments as zero (\$0) because participation for political subdivisions is optional.

<u>FISCAL IMPACT - State Government</u>	FY 2003	FY 2004	FY 2005
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**GENERAL REVENUE**

Costs - Office of Administration  
Division of Purchasing and Materials  
Management (DPMM)

Personal Service (1 FTE)	(\$38,425)	(\$39,386)	(\$40,370)
Fringe Benefits	(\$13,837)	(\$14,183)	(\$14,537)
Expense and Equipment	<u>(\$4,205)</u>	<u>(\$309)</u>	<u>(\$318)</u>
Total <u>Costs - DPM</u>	<u>(\$56,467)</u>	<u>(\$53,878)</u>	<u>(\$55,225)</u>

Costs - Office of Administration  
Division of Facilities Management (DFM)

<u>FISCAL IMPACT - State Government</u>	FY 2003	FY 2004	FY 2005
Personal Service (2 FTE)	(\$90,312)	(\$94,200)	(\$97,026)
Fringe Benefits	(\$32,521)	(\$33,921)	(\$34,939)
Expense and Equipment	(\$8,570)	(\$1,340)	(\$1,340)
Total <u>Costs</u> - DFM	<u>(\$131,403)</u>	<u>(\$129,461)</u>	<u>(\$133,305)</u>

<u>Costs - Increased Contract Letting Costs*</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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\*Expected to exceed \$100,000 annually.

<b>ESTIMATED NET EFFECT ON ALL GENERAL REVENUE FUNDS*</b>	<b><u>(\$187,870 to Unknown)</u></b>	<b><u>(\$183,339 to Unknown)</u></b>	<b><u>(\$188,530 to Unknown)</u></b>
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**\*Does not include possible increased  
costs for services and goods.**

#### **VARIOUS STATE FUNDS**

<u>Costs - Increased Contract Letting Costs</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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<b>ESTIMATED NET EFFECT ON VARIOUS STATE FUNDS</b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>	<b><u>(Unknown)</u></b>
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#### **FEDERAL FUNDS**

<u>Income - DOS</u>			
Medicaid Reimbursements	Unknown	Unknown	Unknown

<u>Cost - DOS</u>			
Program Costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>
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<u>FISCAL IMPACT - Local Government</u>	FY 2003	FY 2004	FY 2005
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FISCAL IMPACT - Local Government

FY 2003

FY 2004

FY 2005

\$0

\$0

\$0

FISCAL IMPACT - Small Business

Small businesses that want to enter into a privatization contract with a state agency or political subdivision may be negatively impacted by increased paperwork and being restricted to two-year contract periods.

DESCRIPTION

This proposal regulates the use of privatization contracts by the state. The Department of Transportation; municipal fire departments who contract with private companies as contained in Section 85.012, RSMo; and public bodies who contract for architectural services, engineering services, or land surveying services are not covered. Privatization contracts are agreements or a combination or series of agreements in which a non-governmental person or entity agrees with a public body to provide services valued at \$25,000 or more which could have been provided by regular employees of a public body. The proposal:

- (1) Creates the Public Service Accountability Act and prohibits public bodies from entering into privatization contracts, except under the conditions of the proposal;
- (2) Requires public bodies to prepare a written statement specifically describing the services to be provided under a privatization contract. The public body will solicit competitive sealed bids for privatization contracts based upon this statement and will publish the statement in the Missouri Register no later than thirty business days prior to when bids are due. Bid requirements are outlined in the proposal;
- (3) Requires contractors who enter into privatization contracts to compensate employees at the rate a state employee doing similar work would receive or the average private sector compensation rate, whichever is greater. The compensation must include the value of health insurance and other benefits;
- (4) Limits privatization contracts to two years;
- (5) Requires privatization contracts to contain a provision requiring the contractor to offer available positions to qualified public employees whose employment was terminated due to privatization contracts;

(6) Requires a nondiscrimination and equal opportunity provision in all privatization contracts;

(7) Prohibits public funds from being used to support or oppose unionization;

(8) Requires public bodies to prepare a comprehensive written estimate of the cost of using regular public employees before considering privatization contracts. The estimate must include employee DESCRIPTION (continued)

pension, insurance, and other benefits;

(9) Requires a public body to consider a contractor's past performance and its record of compliance with federal, state, and local laws before awarding the contract;

(10) Requires a public body to publicly designate the bidder that it proposes to award the privatization contract to;

(11) Requires a public body to prepare a comprehensive written privatization contract cost analysis;

(12) Requires a public body to certify in writing that all provisions of this law have been followed, the quality of services satisfies fiscal and quality requirements, the cost is 10% less than if the public body had completed the services, and the privatization contract is in the public's best interest;

(13) Prohibits a privatization contractor from subcontracting without the approval of a public body;

(14) Requires privatization contractors and subcontractors to file an annual financial audit with a public body;

(15) Requires that a public body have reasonable access to privatization contractors' project financial records, facilities, and employees;

(16) Requires the privatization contractor to submit at least an annual report detailing progress and quality of the project. The contractor must also submit a report of its compliance with all federal, state, and local laws and citations, complaints, or findings issued by an administrative agency or court;

(17) Allows a public body to seek contractual remedies for any violation of the privatization contract. Other persons or entities are also allowed to bring a claim against a contractor for certain violations of this proposal;

(18) Restricts ownership rights or interest in any public record by a privatization contractor and requires public bodies and contractors to comply with all open records laws;



(19) Restricts the use of privatization contract records and contract records of a public body. The proposal outlines remedies which may be taken for violation of these restrictions;

(20) Prohibits retaliation against any public employee or private contractor employee who, acting in good faith, discloses information or participates in any investigation or proceedings against any governmental entity relating to a violation of a privatization contract. The identity of any employee complaining in good faith to a public body or elected official about a violation of a privatization  
DESCRIPTION (continued)

contract will be confidential; and

(21) Requires private contractors to post provisions of the privatization contract law and information pertaining to the filing of a charge for the violation of certain provisions of the proposal.

This proposal will apply to all privatization contracts entered into on or after July 1, 2001, or upon the proposal's passage and approval, whichever occurs later.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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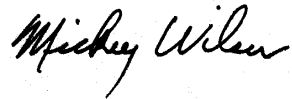
#### SOURCES OF INFORMATION

Department of Conservation  
Department of Economic Development  
Department of Natural Resources  
Department of Social Services  
Department of Insurance  
Department of Mental Health  
Department of Public Safety  
Department of Transportation  
Department of Revenue  
Department of Higher Education  
Department of Labor and Industrial Relations  
Department of Health and Senior Services  
Department of Elementary and Secondary Education  
Department of Agriculture  
Department of Corrections  
Office of Administration  
    Design and Construction  
    Purchasing and Materials Management  
    Facilities Management

Office of the State Courts Administrator  
Office of the Attorney General  
Secretary of State's Office  
City of Springfield  
City of St. Louis

NOT RESPONDING

City of Kansas City  
Jackson County  
St. Charles County  
Greene County



Mickey Wilson, CPA  
Acting Director

February 11, 2002